

AGREEMENT

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This Agreement (hereafter "Agreement") made this 13th day of April, 2005, by and between SGB Office Group, LLC, a Maryland Limited Liability Company, an affiliate of Lerner Enterprises, LLC, (hereafter referred to as "Developer/Applicant"), and Condominium Residences I of Fallsgrave, Inc. (hereafter referred to as "CR I"), and Condominium Residences II of Fallsgrave, Inc. (hereafter referred to as "CR II"),

WITNESSETH

WHEREAS, the Developer/Applicant was one of the developers of real property within a comprehensive planned development of approximately 253.94 acres, more or less, known as Fallsgrave within the corporate limits of the City of Rockville, Maryland,

WHEREAS, the development of real property within Fallsgrave must be in accordance with a Concept Plan adopted by the Mayor and Council of the City of Rockville on February 22, 2000, identified as Resolution No. 1-00 (hereafter the "Fallsgrave Concept Plan"),

WHEREAS, the development of real property as authorized by the Fallsgrave Concept Plan require approval of Detailed Applications by the City of Rockville.

WHEREAS, SGB Office Group, LLC, is the developer of a parcel of land within Fallsgrave which is denoted on Exhibit A to this Agreement as geographic area "A", and which is identified on Exhibit 18, entitled "Land Use Concept Plan," to Resolution No. 1-00 as "Office/R&D #6" (hereafter "Parcel A"),

WHEREAS, SGB Office Group, LLC, is the developer of a parcel of land within Fallsgrave which is denoted on Exhibit A to this Agreement as geographic area "B", and which is identified on Exhibit 18, entitled "Land Use Concept Plan," to Resolution No. 1-00 as "Office/R&D #5" (hereafter "Parcel B"),

WHEREAS, Developer/Applicant is a member of Fallsgrave Associates, LLC,

the owner of a parcel of land within Falls Grove which is denoted on Exhibit A to this Agreement as geographic area "C", and is, generally, a triangular shaped parcel of land in the southwestern quadrant of the intersection of Wood Hill Drive and West Montgomery Avenue (Maryland Route 28) (hereafter "Parcel C"),

WHEREAS, the type and form of development proposed for Parcel A and Parcel C by Developer/Applicant necessitate an amendment to the Falls Grove Concept Plan,

WHEREAS, the Falls Grove Concept Plan may be amended under the provisions of the Zoning Ordinance of the City of Rockville by the Mayor and Council of the City of Rockville after a recommendation from the Planning Commission of the said City,

WHEREAS, the Falls Grove Associates has filed with the City of Rockville an application to amend the Falls Grove Concept Plan to permit development of Parcel A and Parcel C as desired by the Developer/Applicant which is identified as "CPD1999-0004B" (hereafter "Application CPD 1999-0004B"),

WHEREAS, the Developer/Applicant wishes to have the support of the residents of the Condominium Residences of Falls Grove for Application CPD1999-0004B to amend Falls Grove Concept Plan to, among other things, authorize development of Parcels A, and C as desired by the Developer/Applicant,

WHEREAS, the Developer/Applicant has made certain assurances and commitments to the Condominium Residences I and Condominium Residences II of Falls Grove in exchange for the CR I and CR II support for Application DPD1999-0004B and the subsequent Detailed Application,

WHEREAS, the CR I and CR II agree to support Application CPD1999-0004B and the subsequent Detailed Application provided the Developer/Applicant agrees to the assurances and commitments provided for herein,

NOW, THEREFORE, upon consideration of the foregoing and the promises contained herein, the receipt and adequacy of which is hereby acknowledged, the parties do hereby agree as follows:

1. The provisions of this Agreement concerning land use matters set forth herein are subject, in each instance, to the review and approval of the City of Rockville pursuant to its rules and regulations.

2. This Agreement shall be binding upon each of the parties hereto, their employers, agents, successors, and assigns, except that the tenants of any commercial property within the Falls Grove development shall not be bound by the responsibilities and obligations of Developer/Applicant provided for under this Agreement.

3. A. This Agreement and each and every provision contained herein, is expressly contingent, upon the following:

(i) approval of Application CPD1999-0004B (and the expiration of all applicable appeal periods) providing for a hotel on Parcel A and an office use on Parcel C, both identified on attached Exhibit "A";

(ii) approval of the Detailed Application for a Hotel building(s) on Parcel A (and the expiration of all applicable appeal periods);

(iii) approval of the Detailed Application for an Office Building on Parcel B (and the expiration of all applicable appeal periods);

(iv) approval of the Detailed Application for an Office Building on Parcel C (and the expiration of all applicable approval periods);
and

(v) development of Parcel A in accordance with Application CPD1999-0004B and the Detailed Applications for hotel use.

B. In the event the items identified above in subparagraphs (i), (ii), (iii), (iv) and (v) do not occur, Developer/Applicant shall have no responsibilities

or obligations under this Agreement and said Agreement shall become null and void.

C. Notwithstanding the foregoing, in the event item (i) as it pertains only to the office development on Parcel C, item (iii) or item (iv) identified above in paragraph 3A do not occur, all obligations of Developer/Applicant under this agreement shall remain in effect only if Developer/Applicant determines in its sole and absolute discretion to move forward with the development of Parcel A in accordance with the approved Detailed Applications set forth above in accordance with Application CPD1999-0004;

D. Notwithstanding any of the foregoing, in the event the development of Parcel A proceeds in accordance with Application CPD1999-0004, all of the terms of this agreement remain in full force and effect and are binding on the parties.

4. Provided nothing at law or by rule, regulation or ordinance would prevent the Developer/Applicant from undertaking such work on an immediate basis, the Developer/Applicant agrees that prior to the commencement of any work on any of the buildings included in any of the approved Detailed Applications for Parcel A or B, work shall commence on the expansion of the brick/wrought iron wall-fence that sporadically appears along certain sections of the perimeter of the Condominium Residences of Falls Grove in several areas marked on Exhibit B (back of Buildings I and II from Wood Hill to Falls Grove, between exterior garages on the Blackwell side of Building II, and certain sections along Wood Hill) and, in addition thereto, work shall commence on the installation of the wrought-iron traffic gates at the entrances to the Condominium Residences of Falls Grove —the design to be developed in cooperation with the boards of directors of CR I and CR II, one illustration of which is shown on Exhibit C. (This matter should help alleviate security concerns, and requires city approval). All at no cost to the Condominium Residences of Falls Grove or its residents. Installation of the aforesaid

traffic gates and wrought iron fence will be completed as expeditiously as possible. After installation of the foregoing improvements in this paragraph 4, CR I and CR II shall be responsible for the ongoing maintenance and repair of all such improvements, and the Developer/Applicant shall have no responsibility or liability for same.

5. Provided nothing has been initiated at law or by rule, regulation or ordinance that would prevent the Developer/Applicant from undertaking such work on an immediate basis, the Developer/Applicant agrees that prior to the commencement of any work on any of the buildings under any of the approved Detailed Applications for Parcel A or B, construction shall commence on a parking lot for 20 vehicles on Parcel B between the parking garage and Wood Hill Road for the exclusive use of the residences of the Condominium Residences and/or their guests, as shown on attached Exhibit D. Construction of the aforesaid parking lot will be completed as expeditiously as possible. All liability associated with the use of the lot, lighting, maintenance and repairs, and snow removal will be the responsibility of the Developer/Applicant.

6. The parking garage on Parcel B will not exceed two and one half levels above grade level as shown on Exhibit E, with any additional levels to be below grade.

7. The parking garage on Parcel B will be screened with a 3 to 7 foot berm (to the maximum extent feasible) and landscaped with evergreens as shown on attached Exhibit E. Additionally a lattice-work and evergreen arrangement will be installed along the edge of the garage roof line and in between the floors of the parking garage on the side facing Wood Hill Road. While the parking facility will not be invisible, its appearance will be significantly shielded from view and enhanced.

8. The height of the office building on Parcel B will not exceed five stories.

9. No entrance for the Office Building or parking structure on Parcel B will be located on Wood Hill Road. The only entrance on Wood Hill Road for Parcel B will be for the parking lot reserved exclusively for the use of the residents and/or guests of the Condominium Residences.

10. Developer/Applicant will pursue efforts to locate on Shady Grove Road an entrance into and/or an exit out of the parking structure on Parcel B, as shown on Exhibit A.

11. For a period of fifteen years, , from the date the office building on parcel B is completed and available for occupancy, Developer/Applicant will ensure that no daily parking fees are charged for use of the unreserved parking spaces in the parking structure serving Parcel B and that no more than 65% of such spaces shall be reserved pre-paid spaces.

12. The retail/restaurant uses in the Office Building on Parcel B will have front door entrances on Shady Grove Road only (with the corner spaces having emergency access points on the sides of the building if required by code and, except for food/restaurant uses and service oriented uses, such as a Red Door Salon, will not exceed 3,000 square feet for any one retail tenant. No convenience store such as 7/11 will be allowed.

13. The height of the Hotel on Parcel A to be limited to 6 stories, as depicted in documents attached to application and in attached Exhibit F.

14. Signage on the side of the Hotel facing Blackwell Road will be subdued and placed in locations to make it less obtrusive. Building signage on the side of the Hotel facing Blackwell Road will be as shown on attached Exhibit F and may be illuminated (not flashing, single channel internally illuminated and or rear illuminated (halo style) letters). Monument signage may be erected at the entrance to the Hotel closest to Shady Grove Road or on Shady Grove Road.

15. Landscaping along Blackwell Road on the side of the Hotel will be enhanced to offer a more attractive view for the condominium residents as shown on Exhibit D.

16. Entrances into the Hotel parking lot will be placed on Blackwell Road to cause the least amount of interference with traffic along Blackwell Road; on the one end, as close to Shady Grove Road as possible and on the other end, as close to the property

line as is possible, as shown on Exhibit D.

17. Nighttime security for the Hotel will be provided. The hotel staff will be made aware of the citizens concerns and will be available 24 hours a day, 7 days a week to address any situation that may arise. Every effort will be made to assure that the parking area remains quiet after hours, with any problems or complaints to be handled immediately by the Hotel Manager on duty.

18. Hotel meeting rooms will be limited in size not to exceed in total when combined together 3,000 square feet, so as to discourage use for large third party social events. The kitchen facility on site will not be sized to handle the food preparation needs of any large social events.

19. The Hotel dumpster will be located out of sight from Blackwell Road. It will be screened from view and will be located at the rear of the Hotel along the southern property line as shown on exhibit D, with the approval of the City.

20. No ancillary retail establishments, other than what is usual and customary in lobby shops associated with limited service hotels will be allowed in the Hotel. The restaurant and bar area within the Hotel will primarily serve the guests and invitees of the Hotel.

21. Every effort will be made, including signage, to preclude anyone associated with the Hotel from parking on Blackwell Road. In the event that it is determined that a Hotel employee or guest is parking on Blackwell Road, Developer will follow City and County laws and ordinances for its removal.

22. The residents of the Condominium Residences of Falls Grove will continue to have the opportunity to be involved in the review of Hotel interior and exterior for compliance with quality standards prior to and during the Rockville Detailed Plan Application process. The Developer/Applicant will notify the presidents of each of the association boards of directors of Condominium Residences I and II when information is ready for their review.

23. The Condominium Residences of Fallsgrove, will be provided with an opportunity to review all parking area site lighting decisions prior to and during the Detailed Application process for compliance with this Agreement. This includes lighting in the Hotel parking lot and in the office building parking structure on Parcel B. Applicant intends to use downward directed lighting at the lowest possible candlelight that assures public safety concerns and no less than is required by code. The Developer/Applicant will notify the presidents of each of the association boards of directors of Condominium Residences I and II when information is ready for their review.

24. The Hotel will provide a generator to ensure electricity to a portion of the Hotel, which area will be available to the Fallsgrove Community residents in case of an area-wide blackout.

25. Use of the Hotel pool and exercise facility by residents of the Condominium Residences of Fallsgrove will be at no charge during the hours of 9:00 A.M. to 5:00 P.M.

26. Use of the Hotel meeting room(s) (or restaurant area, if meeting rooms are needed by the hotel) by the condominium associations will be made available by the Hotel (no more often than twice per month), without charge on at least one week's prior notice for scheduling purposes.

27. Developer/Applicant will clean up debris on Parcel A, Parcel B and Parcel C on a continuing basis.

28. Developer/Applicant will continue its efforts with the City of Rockville to initiate operations of the multi-modal center.

29. The amount of retail space in the office building on Parcel B shall be limited to 19,000 square feet in total regardless of the amount approved by the City of Rockville.

30. The final architectural design of the Office Building and parking structure on Parcel B will be submitted to the presidents of each of the association boards of directors of Condominium Residences I and II for their review (so that they can assure compliance

with this memorandum of understanding) prior to and during the Detailed Application process.

31. No further changes or modifications to the overall Falls Grove Comprehensive Plan shall be submitted to the City of Rockville which are in contravention of this Agreement without the expressed written approval of the boards of directors of the Condominium Residences I and Condominium Residences II of Falls Grove.

32. If any party hereto believes any other party has breached an obligation under this Agreement, then such party may submit such breach, in writing to the other party and the parties shall meet at a mutually convenient time to discuss the alleged breach. If no sooner than ten (10) days after such meeting the party who has alleged to have breached this Agreement fails to commence to remedy such breach, any party may submit the dispute to binding arbitration (the "Arbitration"). If either party elects to submit a matter to such Arbitration, such party shall so notify the other party that such party has elected to have the issues submitted for determination by a three-member panel (the "Arbitrators") of the American Arbitration Association ("AAA"). The Arbitration shall be conducted in accordance with applicable Commercial Arbitration Rules of the AAA (the "Rules"), then in effect, except as follows:

- (a) The Arbitration shall be conducted by the office of the AAA in closest proximity to Falls Grove.
- (b) The Arbitration shall be expedited to completion within thirty (30) days after notice from Tenant electing to arbitrate.
- (c) The three-member panel shall be selected according to the AAA Rules.
- (d) The Arbitrators shall determine only those issues presented by the parties.
- (e) If the Arbitrators determine that a party failed to act in accordance with this Agreement they shall direct that such breach be corrected by the defaulting party.
- (f) The Arbitrators shall order (i) reimbursement by the defaulting party of all actual costs and expenses incurred in the Arbitration

by the non-defaulting party, if default is found, or (ii) in the event arbitration is initiated and later withdrawn unilaterally by the alleging party or, upon final determination by the arbitrators default is not found, reimbursement by the alleging party of all actual costs and expenses incurred in the Arbitration by the non-alleging defending party, as the case may be. The Arbitrators shall review the claim for reimbursement of costs and expenses to determine the reasonableness and fairness of the actual costs and expenses and ensure they are not duplicitous.

- (g) Because of the expedited process agreed to herein, no discovery shall be allowed except for the following: seven (7) days prior to the scheduled hearing, the Parties shall exchange all documents which the Parties intend to use at the scheduled hearing.
- (h)
 - (i) After all of the evidence has been presented, and the hearing has concluded, the Arbitrators shall issue a ruling and/or an award within fifteen (15) days.
 - (ii) A judgment upon that award shall be enforceable in any court having jurisdiction of such matters.
 - (iii) The Arbitrators shall have no authority to award punitive damages or exemplary damages or other damages.
- (i) Each Party acknowledges that, by entering into this Agreement, each Party has agreed to arbitrate disputes and that such agreement necessarily entails a waiver of numerous rights that the Party might have were such disputes to be determined other than pursuant to Arbitration. Nonetheless, each Party knowingly and voluntarily waives all rights that it might otherwise have, including without limitation, the right to litigate such disputes in a state court forum or federal court forum having jurisdiction over this matter; the right to conduct discovery in accordance with the rules of the court in which the litigation concerning the dispute might otherwise be filed; the right to trial in such court, including without limitation the right to trial by jury; and the right to obtain certain damages and remedies that might not be awardable by the Arbitrators hereunder; and the right to an appeal of the Arbitrators' award. The foregoing enumeration of the rights waived by the Party are not intended to be exclusive, and the fact that any right is not specifically listed here shall have no effect on the fact that such right is waived by virtue of the agreement to arbitrate disputes as provided herein.

33. A copy of this Agreement, after it has been signed by the parties, shall be submitted to the City of Rockville for its consideration and incorporation of those

provisions that pertain to land use into any Application approval of CPD1999-0004B and all subsequent Detailed Applications for Parcels A, B or C.

34. The Attachments A, B, C, D, E, F are incorporated by reference into this Agreement and are enforceable.

35. This Agreement contains the entire agreement of the parties, and integrates all of the promises and understandings of the parties and constitutes their entire Agreement. The terms of this Agreement, including the WHEREAS clauses, are contractual, binding, and not mere recitals.

36. The terms of this Agreement may not be altered or amended except by written agreement signed by all of the parties (or their successors or assigns), and this provision itself may not be waived or amended except by written agreement signed by all of the parties.

37. Each party acknowledges that he/she has discussed the terms of this Agreement with advisers of their own choice, including legal counsel.

38. The parties further declare and represent that no promise, inducement, or agreement not herein expressed has been made to any of them, and that this Agreement contains the entire agreement by and among the parties.

39. This Agreement shall be governed by, and interpreted according to, the laws of the State of Maryland.

40. The parties further agree that in the event that additional documentation or instruments are needed to effectuate, in full or in part, the terms and conditions of this Agreement they will cooperate in executing such documents or instruments, and will execute such documents or instruments.

41. This Agreement shall be executed in four (4) originals, each of which shall be deemed an original for all purposes and shall be enforceable and binding on all of the parties hereto. Each such original Agreement shall be admissible into evidence as an original Agreement.

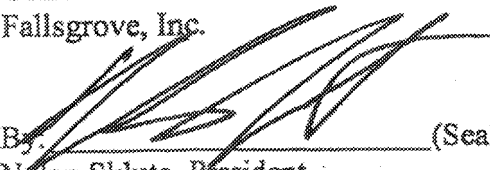
42. Each of the signatories to this Agreement expressly warrants that he/she has the necessary right and authority, and is fully empowered, to enter into this Agreement.

THE UNDERSIGNED HAVE READ THE FOREGOING AGREEMENT AND FULLY UNDERSTAND IT.

IN WITNESS WHEREOF, the parties have hereto set their hands and seals as of the date set forth above and intending to be legally bound hereby.


Condominiums:

Condominium Residences I of
Falls Grove, Inc.

By:  (Seal)
Nolan Sklute, President

Developer/Applicant:

SBG Office Group, LLC, a
Maryland limited liability company

By:  (Seal)
Edward L. Cohen, Authorized
Representative

Condominium Residences II of
Falls Grove, Inc.

 (Seal)
Thiel Sullivan, President

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